Supreme Court, U.S.
FILED

981136 SEP 2 1998

No.

IN THE
SUPREME COURT of the UNITED STATES
OCTOBER TERM, 1998

BRIAN J. TERRILL
ROGER L. EASLEY

Petitioners,

VS.

STATE OF ILLINOIS,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THIRD DISTRICT APPELLATE COURT
STATE OF ILLINOIS

PETITION FOR WRIT OF CERTIORARI

Brian J. Terrill, Pro Se
P. O. Box 16042
Denver, Colorado 80216
(303) 246-3580

Roger Easley, Pro Se
P. O. Box 7399-215
Breckenridge, Colorado 80424

QUESTIONS PRESENTED

A. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas detention of Defendants was without probable cause is a clear violation of Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, et. al.

B. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas searching Defendants without a warrant was a clear violation of Mapp v. Ohio 367 U.S. 643, particularly since there were no exigent circumstances at the scene (as laid out in Chimmel v. California 395 U.S. 752) et al.

C. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas defendants being denied counsel at the scene of incident and every meaningful hearing after is a clear violation of Miranda v. Arizona 384 U.S. 436. et. al

D. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas jurisdiction being challenged and never proven, yet Defendants were summarily convicted and fined, would be clearly outside the decision in Hagan v. Levine 158 U.S. 282, et al.

E. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas the State's Attorney prosecuting this case over the objections of the Defendants would appear to be opposite the decision in First National Bank v U.S., 38 F 2d 925., et al.

F. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas no corpus delecti was established by the Prosecution showing that a common law crime had been committed and therefore satisfying the requirements of Brown v. State, 361 U.S. 936, et al.

G. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas Defendants criminal intent was ever alleged or proven by the

Prosecution and therefore satisfying the requirements of Commonwealth v. Carter, 27 NE 2nd 690, et al.

H. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas the prosecution brought forth reliable witnesses, as outlined in the requirements of Briscoe v. LaJue, 460 U.S. 210, et al.

I. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas, as Defendants contend, according to Article 1, Section 10 of the U.S. Constitution that being forced to pay a fine in private exchange notes would be a clear violation of rights, et al.

J. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas defendants were outside the state of the forum of the statute therefore were not subject to the penalties of the violation thereof (The Slaughterhouse Cases, 83 U.S. (16 Wall) 36), et al.

K. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas Defendants, having been denied opportunity to question and/or instruct the jury, were therefore denied the right to be tried by an impartial jury of their peers and\or due process was denied, Article IV, Section 4 U.S. Const.,et al.

L. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas fingerprints, photographs and other evidence taken from defendants by force at the Geneseo City Jail without court order is in clear violation of Davis v. Mississippi, 394 U.S. 721, et al.

M. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas the trial court denied itself jurisdiction pursuant to Johnson v. Zerbst, 304 U.S. 458,468. by denying Defendants counsel of choice pursuant to McCallen v. Massachusetts, 279 U.S. 620, 630 , People v. Price, 262 N.Y. 410, 412, et. al.

N. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas

Justice William E. Holdridge in the Appellate court agreed with your Petitioners position in this case.

O. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas a true and correct copy of the transcripts of all the proceedings were NEVER handed up to the Appellate court.

P. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas actions of judges Barnes and Hanson satisfy minimum standards of judicial performance and competence pursuant to S. Ct. Rule 58.,et al.

Q. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas actions of judges Barnes and Hanson satisfy minimum standards of judicial performance and competence pursuant to Illinois Code of Judicial Conduct as laid out in S. Ct. Rule 61, 62, and 63, et. al.

R. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas the Opinion given explaining the decision of the Appellate Court is replete with inaccuracies that need to be addressed.

S. Did the Third District Appellate Court, Ottowa, Illinois err in their decision affirming the conviction whereas the Opinion given explaining the decision of the Appellate Court is incomplete in its' addressing of the issues presented.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were the petitioners and defendants Brian Terrill and Roger Easley and plaintiffs State of Illinois.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

PARTIES TO THE PROCEEDING.....iv

LIST OF APPENDICES.....viii

TABLE OF AUTHORITIES.....iv

OPINIONS BELOW..... 1

JURISDICTION..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED..... 2

STATEMENT OF THE CASE..... 5

A. The May 12th detention and arrest..... 5

B. Procedural History..... 6

1. Proceedings in the County Court..... 6

2. Proceedings on Appeal..... 6

WHY CERTIORARI SHOULD BE GRANTED..... 9

REVIEW IS WARRANTED BECAUSE THE THIRD DISTRICT APPELLATE COURT HAS DECIDED NUMEROUS IMPORTANT QUESTIONS IN WAYS THAT CONFLICT WITH PRECEDENCE SET IN THIS VERY COURT. . 9

1. The Third District Appellate Court has decided Oleson had a right to detain the plaintiffs a second time for no reason. in violation of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, (1961), Boyd v. United States, 1886, 116 U.S. 616,630,6S.Ct. 524, 532, et al. 9

2. The Third District Appellate Court has decided State's Attorney, Hamer had power to authorize warrantless search in violation of Coolidge v. New Hampshire, Carol v. U.S., Chimmel v. California, et.al..... 17

3. The Third District Appellate Court has decided officers had a right to interrogate, photograph, and fingerprint the plaintiffs against their will and over their objections, without court order violation of Davis v. Mississippi 394 US 721 (1969)..... 23

4. The Third District Appellate Court has affirmed the conviction whereas defendants being denied counsel at the scene of incident and every meaningful hearing after is a clear violation of Miranda v. Arizona 384 U.S. 436. et. al..... 24

5. Justice William E. Holdridge in the Third District Appellate court has agreed with your Defendants arguments of law and rights in this case giving further credence to the need for further review..... 24

6. A true and correct copy of the record of proceeding in the trial court were never handed up to the Appellate court allowing a full review..... 24

Furthermore it can be proven that the record handed up to the Appellate Court has been criminally altered under the authority of Judge Hanson and is not a true and correct copy of the proceedings..... 24

7. Your Defendants allege that actions by Judge Barnes and Judge Hanson (retired) fail to satisfy minimum standards of judicial performance and competence pursuant to S. Ct. Rule 58..... 25

8. Your Defendants allege that actions by Judge Barnes and Judge Hanson (retired)fail to satisfy minimum standards of the Illinois Code of Judicial Conduct as laid out in S. Ct Rule 61, 62, and 63..... 25

9. The Opinion given explaining the decision of the Appellate Court is replete with inaccuracies that need to be addressed..... 27

LIST OF APPENDICES

APPENDIX A

Order affirming the County Courts Judgement, Third District Appellate Court, Ottowa, Illinois, Filed May 30, 1997.....A1

APPENDIX B

Order denying review by the Illinois Supreme Court, Filed June 3, 1998.....B1

APPENDIX C

Judgement, Henry County Court, Filed March 14, 1996.....C1

TABLE OF AUTHORITIES CITED

PAGE

Argersigner v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006 (1972) 6,

Boyd v. United States, 1886, 116 U.S. 616,630,6S.Ct. 524, 532, ... .10,11

Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, ... 17,21,23

Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, ... 21,

Chimel v. California, 395 U.S., at 762 763, 89 S.Ct., at 2039-2040, ...17,22,23,

Coolidge v. New Hampshire(1971) 403 U.S. 443, 91S.Ct. 2022, 29 L.Ed.2d 564, ... 17,18,23

Davis v. Mississippi 394 US 721 (1969),. 23

Duncan v. Louisiana, 391 US 169, ...3

Elkins v. United States, 364 U.S.222, 80 S.Ct.1447, ...16

Johnson v. United States, 333 U.S. 10, 13-14, 68 S.Ct. 367, 369, ... 19

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, (1961),.. 9,10,22,23

Miranda v. Arizona 384 U.S. 436,
86 S.Ct.1602(1966), ...24

People v. Easley and Terrill,
288 Ill. App. 3d Dist. 1997 1,9

Preston v. United States, 376
U.S. 364, 84 S.Ct. 881, ...21

Schmerber v. California, 384
U.S. 757, ...23

Terrill, et. al. vs. Oleson, et.al.,
United States District Court in
the Central District at Rock Island,
Illinois, in Case No. 97-4061, ...1,2

Weeks v. United States, 1914,
232 U.S. 383, 34 S.Ct. 341, ...12

Wolf v. People of State of Colorado,
1949, 338 U.S. 25, 69 S.Ct. 1359,.. 11

PETITION FOR WRIT OF CERTIORARI

Petitioners Brian Terrill and Roger Easley respectfully pray that a writ of certiorari issue to review the order of the Third District Appellate Court, Ottowa, Illinois, affirming the County Court (Henry, Illinois) judgement, entered in the above proceeding on May 30, 1997, and the order from the Illinois Supreme Court denying leave to appeal on June 3, 1998.

OPINIONS BELOW

The Third District Appellate Court, Ottawa, Illinois issued an order affirming the conviction in the trial court, Henry County Court, and is reprinted herein as Appendix ("App.") A. to the petition and is reported at, Opinion dated May 30, 1997, (People v. Easley and Terrill, 288 Ill. App. 3d Dist. 1997.

A timely motion for Leave to Appeal, Number 85038, was denied review by the Illinois Supreme Court on June 3, 1998, whereby it was remanded to the trial court on June 23, 1998. A copy of this order is attached hereto as Appendix B.

The judgement of the trial court (Henry County) appears at Appendix C to the petition and is, to the knowledge of your petitioner, unpublished.

JURISDICTION

The date on which the highest state court decided this case was Opinion dated May 30, 1997, (People v. Easley and Terrill, 288 Ill. App. 3d Dist. 1997). A copy of that decision appears at Appendix A.

A timely motion for Leave to Appeal was denied review by the Illinois Supreme Court on June 3, 1998, and a copy of the order denying leave appears at Appendix C.

In the Order of the United States District Court in the Central District at Rock Island, Illinois, in Case No. 97-4061, (Terrill, et. al. vs. Oleson, et.al.), Judge Michael M. Mihm wrote on September 18, 1997, "This court has no authority to reexamine either the state judge's rulings or the Illinois Appellate Court decision affirming the plaintiffs' convictions. Any appeal lies with the Illinois Supreme Court, and then the United States Supreme Court." (See Page 7 and 8.) The district court took allegations relating to violations of the plaintiffs' constitutional rights as true, (See Page 2.) and defendants let these allegations stand uncontested. As the case sub judis was dismissed against some of the parties without prejudice, this Honorable Court is also asked to review the appeal so that Defendants prayer for relief may be granted on these terms of the district court, under 42 U.S.C. Section 1983, et. al.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATURORY PROVISIONS INVOLVED

U. S. Const. Art. I, sec. 10, "No State Shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

U.S. Const. Art. III, sec. 1, "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may foom time to time ordain..." U.S. Const. Art. III, sec. 2, clause 1, "The judicial power shall extend to all Cases, in Law and Equity..."

U.S. Const. Art. III, sec. 2, clause 2, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction."

U.S. Const. Art IV, sec. 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

U.S. Const. Art IV, sec. 2. "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

U.S.Const. Art. IV. Sec.4 "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion;"

U.S. Const. Art VI, sec. 2. "This Constitution, and the Laws of the united States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the united States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or the Laws of any State to the Contrary notwithstanding."

U.S. Const. Amendment 1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Const. Amendment 4. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amendment 5. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,.....nor be deprived of life, liberty, or property, without due process of law; nor shall private properly be taken for public use, whithout just compensation.

U.S. Const. Amendment 6. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. And to be informed of the

nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for this defence."

U.S. Const. Amendment 7. "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

U.S. Const. Amendment 8. "Excessive bail shall bot be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S. Const. Amendment 9. "The enumeration in the Constitution, of certain rights, shall not be Construed to deny or disparage others retained by the people."

U.S. Const. Amendment 10. "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

U.S. Const. Amendment 11. "The Judicial power of the united States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one on the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

U.S. Const. Amendment 13. "Neither slavery nor involuntary servitude, ...shall exist within the United States, or any place subject to their jurisdiction."

U.S. Const. Amendment 14. "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Const. Amendment IV, "and no Warrants shall issue but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amendment V, "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Illinois State Constitution 1970, Article VI, paragraph 9."Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction..."

Ill. S. Ct rule 323(c). "If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. Il.S.Ct.323(c).

STATEMENT OF THE CASE

A. The May 12th detention and arrest.

Your Defendants while traveling on May 12, 1995 were subject to a routine traffic stop. No citations were given and Defendants were told they were free to go, and have a safe trip.

Defendants were then immediately detained and subsequently searched without affording Defendants warrants and/or counsel; over the objections of your Defendants (R400).

Defendants were then taken to the Geneseo City Jail against their will, interrogated, photographed and fingerprinted without a court order, and over their objections.

Defendants paid bail under duress (R45) to obtain freedom, yet property of Defendants was converted without due process and is still in possession of the Geneseo Police Department.(R24, R25,et.al.)

B. Procedural History

1. Proceedings in the County Court.

In Henry County case Nos. 95 CM-377, Roger L. Easley and 95 CM-354 , Brian J. Terrill, the defendants were charged with possession of cannabis and possession of paraphernalia; class A misdemeanors.

Defendants appeared in the Henry County Court, as ordered. At this arraignment on June 12, 1995, Defendants were denied the right to face the accuser (R17), right to counsel (R9, R11,R14-16 et.al.), jurisdiction was challenged and not proven (R3, R6, R13, R14, et. al.), Defendants demanded the Attorney General prosecute, yet were prosecuted by the States Attorney (R71,72, et. al.).

The court proceeded against your Defendants, whereby numerous motions and briefs, all supported with U.S. Supreme Court decisions were filed by your Defendants.

Hearings were held on all motions and summarily denied, except for the motion for a jury of twelve. Jury Trial, took place and your Appellants were convicted of possession of cannabis and possession of paraphernalia. The Court imposed fines and numerous ancillary fees against Terrill totaling $2177. and $500. less for Easley.

The State and the Court in a pretrial hearing on June 12, 1995 waived jail time for defendants, when the defendants objected to being denied counsel, the court was informed by Easley that the Argersigner v. Hamlin rule, 407 U.S. 25, 92 S. Ct. 2006 (1972) was thereby invoked. (whereby there could be no jail time for these misdemeanor charges because the defendants had been and were being denied counsel at any (and in this case every) meaningful hearing).

2. Proceedings on Appeal

Appeal was perfected timely.

Easley and Terrill, during the appeal, motioned the trial court and the appellate court to proceed In Forma Pauperis.The motion was GRANTED in the trial court on the basis of the defendants contention that there is no lawful money in circulation pursuant to Article I, Section 10, U.S. Const. For this reason, the Defendants received 459 pages of transcripts without payment to the Court by the defendants. The Defendants received these transcripts from the trial court, directly, in person on July 29, 1996.

Transcripts of the first appearance (on June 5, 1995) were unavailable by the court because a court reporter was not transcribing and there was no audio recording in progress. Judge Barnes stated that it was a court of record, but that no recording of this court's dialogue is made on Mondays.

In this hearing on June 12, 1995, Easley appeared carrying a micro-cassette recorder which he used to record all but the last 2-3 minutes of his hearing, before Judge Barnes ordered him to turn it off. A standard audio cassette tape was made and this hearing was transcribed on to a word processor. The trial court was provided these instruments along with a motion to correct the record, which were denied being handed up by Judge Hanson, even though they were available.

Judge Hanson, altered or caused to be altered transcripts that were handed up to the Appellate Court , particularly September 28, 1995 and December 18, 1995 wherein lies evidence that the Court bungled the date, and therefore should have dismissed the case. At the end of every hearing, (not June 5, 1995 when there was no record) the court stated the next hearing date and time on record. However at the hearing on September 28, 1995, the date and time of the next hearing is not in the Transcripts. The defendants were given a choice between November 9 and December 18, 1995. Your
Defendants chose December 18, 1995.

When the defendants appeared on December 18, 1995 they were told that they were a day early. The court had inadvertently ordered us to appear on the 18th, which we did, but put our appearance on their calendar for the 19th. Judge Hanson was highly abusive to Easley and Terrill on and off the bench, when the men motioned the court for dismissal because the court was not ready to proceed timely. Judge Hanson on 12/18/95: "You show me your notice." "I'm sorry if we do you a favor but you're stuck." "The record shows I think your position is crazy." (R4).

Neither the ordering of Defendants return on December 18th at the September 28th hearing nor the Defendants' motioning the court for dismissal on December 18th are in the Transcripts. However this Honorable Court has the power to subpoena the Court Reporters original record and prove there has been an alteration, and your Defendants would urge this matter be looked into.

Coincidentally, the Transcripts of the September 28th and December 18th hearings, the ones in question, were not bound pursuant to Illinois Supreme Court Rules.

In the matter of your defendants allegations that the record was altered, please refer to a newspaper article in the Kiwanee Star Tribune by freelance writer, Judy Schale, from September,1995. In the final sentence, Schale, who was a witness at this hearing,
September 28, 1995) is quoted, "More motions will be heard on December 18."

The petitioners, Roger L. Easley and Brian J. Terrill, without aid of licensed counsel, pursuant to Supreme Court Rules 315, 318 and 612, respectfully petition for leave to appeal to the Illinois Supreme Court from a decision of the Appellate Court of Illinois, Third Judicial District, which affirmed the defendants' convictions for possession of cannabis and possession of paraphernalia in an Opinion dated

May 30, 1997, (People v. Easley and Terrill, 288 Ill. App. 3d Dist. 1997).

Outside the exceptions in IL. S. Ct. 316, 317, "all appeals from Appellate to Supreme Court permitted only if petition for leave to appeal granted". (IL. S. Ct. 315) If this petition for leave to appeal is granted, an oral argument is demanded pursuant to Rule 352(a).

Rule 318 contains general provisions governing all appeals from the Appellate Court to the Supreme Court, taken from former Rules 32 and 39(2) This rule deals with the usual situation in which review of decisions of the Appellate Court is discretionary with the Supreme Court. The rule makes explicit the considerations which normally will govern the granting of leave to appeal the importance of the question, conflict with a decision of another Appellate Court or of the Supreme Court, or the need for the exercise of the Supreme Court's supervisory authority. The judgment in the Appellate Court is final.

Defendants were not aware of the requirements of filing an affidavit of intent to seek rehearing with the Appellate Court, therefore, none was filed. It is unknown by your Appellants, whether the Petition for Leave to Appeal filed in the Appellate court on June 30th satisfies the requirements of an affidavit of intent to seek review, however, said petition was denied on July 31, 1997. No petition for a rehearing was filed.

WHY CERTIORARI SHOULD BE GRANTED

REVIEW IS WARRANTED BECAUSE THE THIRD DISTRICT APPELLATE COURT HAS DECIDED NUMEROUS IMPORTANT QUESTIONS IN WAYS THAT CONFLICT WITH PRECEDENCE SET IN THIS VERY COURT.

1. The Third District Appellate Court has decided Oleson had a right to detain the plaintiffs a second time for no reason. in violation of Mapp v. Ohio,

Boyd v. United States, 1886, 116 U.S. 616, 630, 6 S.Ct. 524, 532, et al.

On Page 3 of the court's order it states, "Oleson then apparently detained the plaintiffs a second time, for no reason;" See Geneseo, Il. P.D. Complaint #95-1608 ,page 1 and 2, "Officer Oleson related to TERRILL and his passenger (subsequently identified as ROGER L. EASLEY M\W 052761) that they were free to go and have a safe trip. TERRILL and EASLEY thanked Officer Oleson and asked how far they were from their destination of Chicago. After relating that Chicago was approximately two hours from Geneseo, Officer Oleson asked TERRILL and EASLEY if they had any loaded guns, illegal drugs, or anything else illegal in the vehicle. Both TERRILL and EASLEY looked away from Officer Oleson and replied that there wasn't anything illegal in the vehicle. Officer Oleson asked TERRILL (owner and driver of the Toyota) for consent to search the vehicle which TERRILL and EASLEY both denied consent to Officer Oleson.

Officer Oleson related his concern over the business card with the cannabis leaf on it and TERRILL'S past history of drug arrests. EASLEY replied that they were headed to a "Hemp Fest" in Chicago to promote the legalization of "Hemp." Officer Oleson informed TERRILL and EASLEY that they were free to go, but Officer Oleson was detaining the Toyota until a K-9 could circle the vehicle." These facts alleged by Oleson along with(on Page 1 of same complaint) his assessment that "TERRILL was observed to be overly nervous " comprised the basis of Oleson's reasoning to detain the Plaintiff-Appellants which your Plaintiff-Appellants contend were in violation of Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, (1961)

Dollree Mapp was convicted under Ohio law for possession of obscene books, pictures, and photographs. She challenged the conviction on the grounds that the evidence used against her was unlawfully seized.

One day in May 1957, several Cleveland police officers came to Miss Mapp's residence looking for a fugitive who was believed to be hiding out in her home. They requested entrance, but Miss Mapp refused to admit them without a search warrant. After she refused a second time, the police broke into the apartment and then physically assaulted and handcuffed her when she grabbed a piece of paper that they told her was a valid search warrant. The officers searched the entire house and discovered the obscene materials which were later used to convict her. The Ohio Supreme Court affirmed the conviction and the U. S. Supreme Court granted certiorari.

Mr. Justice CLARK delivered the opinion of the Court.

The State says that even if the search were made without authority, or otherwise unreasonably, it is not prevented from using the unconstitutionally seized evidence at trial, citing Wolf v. People of State of Colorado, 1949, 338 U.S. 25, 69 S.Ct. 1359, in which this Court did indeed hold "that in a prosecution in a State court for a State crime the Fourteenth Amendment does not forbid the admission of evidence obtained by an unreasonable search and seizure.;

[I]t is urged once again that we review that holding.

Seventy-five years ago, in Boyd v. United States, 1886, 116 U.S. 616, 630, 6 S.Ct. 524, 532, considering the Fourth and Fifth Amendments as running "almost into each other" on the facts before it, this Court held that the doctrines of those Amendments

"apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property * * * Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a

man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation * * * [of those Amendments]." The Court noted that "constitutional provisions for the security of person and property should be liberally construed. * *

Less than 30 years after *Boyd,* this Court, in Weeks v. United States, 1914, 232 U.S. 383, 34 S.Ct. 341, stated that "the 4th Amendment * * * put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints [and] * * * forever secure[d] the people, their persons, houses, papers, and effects, against all unreasonable searches and seizures under the guise of law , * * and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws."

[T]he Court in that case clearly stated that use of the seized evidence involved "a denial of the constitutional rights of the accused." * * * Thus, in the year 1914, in the *Weeks* case, this Court
"for the first time" held that "in a federal prosecution the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." * * * This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required---even if judicially implied--deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words." * * *

In 1949, 35 years after *Weeks* was announced, this Court, in Wolf v. People of State of Colorado, * * * again for the first time, discussed the effect of the Fourth Amendment upon the States through the operation of the Due Process Clause of the Fourteenth Amendment. It said: ~'

"[W]e have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth

Amendment." ~ * *
Nevertheless, after declaring that the "security of one's privacy against arbitrary intrusion by the police" is "implicit in the concept of ordered liberty and as enforcaable against the States through the Due Process Clause,"* * * and announcing it stoutly adhered " to the *Weeks* decision, the Court decided that the *Weeks* exclusionary rule would not then be imposed upon the States as "an essential ingredient of the right." * * * The Court's reasons for not considering essential to the right to privacy, as a curb imposed upon the States by the Due Process Clause, that which decades before had been posited as part and parcel of the Fourth Amendment's limitation upon federal encroachment of individual privacy, were bottomed on factual considerations.

While *they* are not basically relevant to a decision that the exclusionary rule is an essential ingredient of the Fourth Amendment as the right it embodies is vouchsafed against the States by the Due Process Clause, we will consider the current validity of the factual grounds upon which *Wolf* was based.
The Court in *Wolf* first stated that "[t]he contrariety of views of the States" on the adoption of the exclusionary rule of *Weeks* was "particularly impressive" * * * and, in this connection, that it could not "brush aside the experience of States which deem the incidence of such conduct by the police too slight to call for a deterrent remedy * * * by overriding the [States'] relevant rules of evidence.'* * * While in 1949, prior to the *Wolf* case, almost two-thirds of the States were opposed to the use of the exclusionary rule, now, despite the *Wolf* case, more than half of those since passing upon it, by their own legislative or judicial decision, have wholly or partly adopted or adhered to the *Weeks* rule. * * *

[Moreover] the force of [the] reasoning [behind W*olf]* has been largely vitiated by later decisions of this Court. These include the recent discarding of the "silver platter" doctrine which allowed federal judicial use of evidence seized

in violation of the Constitution .by state agents, * * * the relaxation of the formerly strict requirements as to standing to challenge the use of evidence thus seized, so that now the procedure of exclusion, "ultimately referable to constitutional safeguards," is available to anyone even "legitimately on [the] premises" unlawfully searched, * * * and finally, the formulation of a method to prevent state use of evidence unconstitutionally seized by federal agents

It, therefore, plainly appears that the factual considerations supporting the failure of the *Wolf* Court to include the *Weeks* exclusionary rule when it recognized the enforceability of the right to privacy against the States in *1949,* while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.

* * * Today we once again examine *Wolf's* constitutional documentation' of the right to privacy free from unreasonable state intrusion, and, after its' dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that very same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.

Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government. Were it otherwise, then just as without the *Weeks* rule the assurance against unreasonable federal searches and seizures would be "a form of words", valueless and undeserving of mention in a perpetual charter of inestimable human liberties, so too, without that rule the freedom from state invasions of privacy would be so ephemeral and so neatly severed from its conceptual nexus

with the freedom from all brutish means of coercing evidence as not to merit this Court's high regard as a freedom "implicit in the concept of ordered liberty.'" At the time that the Court held in *Wolf* that the amendment was applicable to the States through the Due Process Clause, the cases of this Court, as we have seen, had steadfastly held that as to federal officers the Fourth Amendment included the exclusion of the evidence seized in violation of its provisions. Even *Wolf* "stoutly adhered" to that proposition. * * ~ [T]he admission of the new constitutional right by *Wolf* could not consistently tolerate denial of its most important constitutional privilege, namely, the exclusion of the evidence which an accused had been forced to give by reason of the unlawful seizure. To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment. Only last year the Court itself recognized that the purpose of the exclusionary rule "is to deter--to compel respect for the constitutional guaranty in the only effectively available way by removing the incentive to disregard *it.*"

Indeed, we are aware of no restraint, similar to that rejected today, conditioning the enforcement of any other basic *constitutional* right. The right to privacy, no less important than any other right carefully and particularly reserved to the people, would stand in marked contrast to all other rights declared as "basic to a free society." * * This Court has not hesitated to enforce as strictly against the States as it does against the Federal Government the rights of free speech and of a free press, the rights to notice and to a fair, public trial, including, as it does, the right not to be convicted by use of a coerced confession, however logically relevant it be, and without regard to its reliability. * And nothing could be more certain that that when a coerced confession is involved, "the relevant rules of evidence" are overridden without regard to "the incidence of such conduct by the police," slight or frequent. Why should not the same rule apply to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.? *

Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it also makes very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold. * *

In non-exclusionary States, federal officers, being human, were by it invited to and did, as our cases indicate, step across the street to the State's attorney with their unconstitutionally seized evidence. Prosecution on the basis of that evidence was then had in a state court in utter disregard of the enforceable Fourth Amendment. If the fruits of an unconstitutional search had been inadmissible in both state and federal courts, this inducement to evasion would have been sooner eliminated. * * *

Federal-state cooperation in the solution of crime under constitutional standards will be promoted, if only by recognition of their now mutual obligation to respect the same fundamental criteria in their approaches. "However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement impairs its enduring effectiveness."

There are those who say, as did Justice (then Judge) Cardozo, that under our constitutional exclusionary doctrine "[t]he criminal is to go free because the constable has blundered." * * * In some cases this will undoubtedly be the result. But, as was said in Elkins [v. United States], "there is another consideration-the imperative of judicial integrity.' 364 U.S. at page 222, 80 S.Ct. at page 1447. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to

observe its own laws, or worse, its disregard of the charter of its own existence. * * *

The ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin, we can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the)Due Process Clause, we can no longer permit it to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment. Our decision, founded on reason and truth, gives to the individual no more than that which the Constitution guarantees him, to the police officer no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

The judgment of the Supreme Court of Ohio is reversed and the cause remanded for further proceedings not inconsistent with *this* opinion.

2. **The Third District Appellate Court has decided State's Attorney, Hamer had power to authorize warrantless search in violation of Coolidge v. New Hampshire, Carol v. U.S., Chimmel v. California, et.al**

In the order by the district court dated September 18, 1997, on page 3 it states "The plaintiffs objected to their continued detention, but the officers asserted that the defendant Hamer in his capacity as state's attorney had authorized a warrantless search." Plaintiff-Appellants contend this was a violation of U.S. Const. Amendment

IV, "and no Warrants shall issue but
upon probable cause, supported by Oath
or affirmation and particularly
describing the place to be searched,
and the persons or things to be seized
and the coolidge doctrine,

COOLIDGE v. NEW HAMPSHIRE
Supreme Court of the United States, 1971 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564

During their investigation of the brutal murder of a 14-year-old girl near Manchester, New Hampshire, the police obtained evidence that appeared to implicate Edward Coolidge in the crime. Two witnesses had told police that on the night the girl disappeared, and at the site where her body was eventually found, they assisted a man in a parked 1951 Pontiac signilar to the one owned by Coolidge. In addition, petitioner's wife had voluntarily handed over to the police four weapons and some clothing which he owned. (A laboratory test of the guns revealed that one of them was used to kill the girl, although conflicting test results were later presented at the trial). This and other evidence was brought before the attorney general of the state who was in charge of the investigation and who subsequently helped prosecute the case. Acting in his capacity also as a justice of the peace, he issued an arrest warrant and four search warrants including one authorizing seizure of Coolidge's 1951 Pontiac. (Under a New Hampshire law, all Justices of the peace were empowered to issue search warrants). The police then arrested Coolidge at his home and had the Pontiac, which was parked in the driveway at the time, towed to the police Station. An inspection of the car yielded further evidence which was used at the trial to convict Coolidge. The New Hampshire Supreme Court affirmed and the United States Supreme Court granted certiorari. Among several objections roAsed by petitioner was his contention that the warrant authorizing the seizure and search of his automobile was

invalid because it had been issued by someone with a direct and substantial interest in the outcome of the proceedings instead of by a "neutral and detached magistrate" as required by the Fourth and Fourteenth Amendments.

Mr. Justice STEWART delivered the opinion of the Court.

' The petitioner's first claim is that the warrant authorizing the seizure and subsequent search of his 1951 Pontiac automobile was invalid because not issued by ' a "neutral and detached magistrate." J Since we agree with the petitioner that the warrant was invalid for this reason, we need not consider his further argument that the allegations under oath supporting the issuance of the warrant were so conclusory as to violate relevant constitutional standards. * * *

The classic statement of the policy underlying the warrant requirement of the Fourth Amendment is that of Mr. Justice Jackson, writing for the Court in Johnson v. United States, 333 U.S. 10, 13-14, 68 S.Ct. 367, 369:

"The point Of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's homes secured only in the discretion of police officers * * When the right of privacy must reasonably yield to the right of · search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent" * * *.

In this case, the determination of probable cause was

made by the chief "government enforcement agent" of the State----the Attorney General--who was actively in charge of the investigation and later was to be chief prosecutor at the trial. * * * [T]he State argues that the Attorney General, who was unquestionably authorized as a justice,of the peace to issue warrants under then-exist-ing state law, did in fact act as a "neutral and detached magistrate." * * * [I]t is enough to answer that there could hardly be a more appropriate setting than this for a *per se* rule of disqualification rather than a case-by-case evaluation of all the circumstances. Without disrespect to the state law enforcement agent here involved, the whole point of the basic rule so well expressed by Mr. Justice Jackson is that prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations--the "competitive enterprise that must rightly engage their single-minded attention. * * *

We find no escape from the conclusion *that* the seizure and search of the Pontiac automobile cannot constitutionally rest upon the warrant issued by the state official who was the chief investigator and prosecutor in this case. Since he was not the neutral and detached magistrate required by the Constitution, the search stands on no firmer ground than if there had been no warrant at all. If the seizure and search are to be justified, they must, therefore, be justified on some other theory.

The State proposes three distinct theories to bring the facts of this case within one or another of the exceptions to the Warrant requirement. * * *

[T]he most basic constitutional rule in this area is that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment--subject only to a few specifically established and well-delineated

exceptions." The exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek

exemption * * * that the exigencies of the situation made that course imperative.[T]he burden is on those seeking tee exemption to show the need for it." In times of unrest, whether caused by crime or racial conflict or fear of internal subversion, this basic law and the values that it represents may appear unrealistic or "extravagant" to some. But the values were those of the authors of our fundamental constitutional concepts.

The State's first theory is that the seizure · * * and subsequent search of Coolidge's Pontiac were "incident" to a valid arrest. * * *

Even assuming, *arguendo,* that the police might have searched the Pontiac in the driveway when they arrested Coolidge in the house, Preston v. United States, 376 U.S. 364, 84 S.Ct. 881, makes plain that they could not legally seize thh car, remove it, and search it at their leisure without a warrant. In circumstances virtually identical to those here, Mr. Justice Black's opinion for a unanimous Court held that "[o]nce an accused is under arrest and in custody, then a search [of his car] made at another place, without a warrant, is simply not incident to the arrest." * * * Search incident doctrine, in short, has no applicability to this case.

The second theory put forward by the State to justify a warrantless seizure and search of the Pontiac car is that under Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, the police may make a warrantless search of an automobile whenever they have probable cause to do so, and, under our decision last Term in Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, whenever the police may make a legal contemporaneous search under *Carroll,* they may also seize the car, take it to the police station, and search it there. But even granting that the police had probable cause to search the car, the application of the *Carroll* case to these facts would extend it far beyond its original rationale.

[The rationale, set forth in *Carroll* and affirmed in *Chambers,* was that, as distinguished from the search of a house or other building, in stopping an automobile on the highway "it is not practicable to secure a warrant because the

vehicle can be quickly moved out of the locality or jurisdiction which the warrant must be sought. The Court held that it was the prospect of flight of the evidence that produced the exception.

Since *Carroll* would not have justified a warrantless search of the Pontiac at the time Coolidge was arrested, the later search at the station house was plainly illegal, at least so far as the automobile exception is concerned. * * *

The State's third theory in support of the warrantless seizure and search of the Pontiac car is that the car itself was an "instrumentality of the crime," and as such might be seized by the police on Coolidge's property because it was in plain view. * * *.

> [A]n object that comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant. Chimel v. California, 395 U.S., at 762 763, 89 S.Ct., at 2039-2040. Finally, the "plain view" doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. * *
>
> [I]t is apparent that the "plain view" exception cannot justify the police seizure of the Pontiac car in this case. The police had ample opportunity to obtain a valid warrant; they knew the automobile's exact description and location well in advance; they intended to seize it when they came upon Coolidge's property. And this is not a case involving contraband or stolen goods or objects dangerous in themselves.
>
> The seizure was therefore unconstitutional, and so was the subsequent search at the station house. Since evidence obtained in the course of the search was admitted at Coolidge's trial, the judgment must be reversed and the case remanded to the New Hampshire Supreme Court. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684.

Under oath on December 18, 1997,

Oleson admitted that your petitioners at no time attempted to flee the scene, to run away (transcripts 12-18-95, p. 25), to destroy evidence (p. 25) at no time made gestures as though they were attempting to get guns or weapons of any type (p.25), at no time was anyone seen in the parking lot or on the street that appeared to be in the confidence of Terrill and Easley, that appeared available to endanger the officers or get rid of evidence.(p. 26) that the car was in the officers's control was the assessment of the trial court (p.23) evidence of criminal activity was never in plain view. The Plaintiff-Appellants contend that these factors together indicate that the officers failed to satisfy the requirements of a warrantless car search, as laid out in Mapp v Ohio, 367 U.S. 643, Coolidge v. New Hampshire, 403 U.S. 443, Carroll v. U.S., 267 U.S. 132. Chimmel v California 395 U.S. 752, Schmerber v. California, 384 U.S. 757, et. al.

3. The Third District Appellate Court has decided officers had a right to interrogate, photograph, and fingerprint the plaintiffs against their will and over their objections, without court order violation of Davis v. Mississippi 394 US 721 (1969).

The Order from the district court dated Sept. 18,1997 states on page 3, Following the search, the plaintiffs were taken to the Geneseo City Jail,

where they were interrogated, photographed, and fingerprinted against their will."

4. The Third District Appellate Court has affirmed the conviction whereas defendants being denied counsel at the scene of incident and every meaningful hearing after is a clear violation of Miranda v. Arizona 384 U.S. 436. et. al

REVIEW IS ALSO WARRANTED BECAUSE

5. Justice William E. Holdridge in the Third District Appellate court has agreed with your Defendants arguments of law and rights in this case giving further credence to the need for further review. See Appendix A People v. Easley and Terrill, Justice Holdridge dissenting.

6. A true and correct copy of the record of proceeding in the trial court were never handed up to the Appellate court allowing a full review, "If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection. Il.S.Ct.323 (c).

Defendants did offer a true and correct copy of the missing records in the case sub judis, and it is the contention of the Defendants that not allowing these transcripts in for review violates the Due Process Clause of the 14th Amend. U.S. Const.

Furthermore it can be proven that the record handed up to the Appellate Court has been criminally altered under the authority of Judge Hanson and is not a true and correct copy of the proceedings (See Notice of Corrections to the Record, filed 10-2-96). Therefore your Defendants should receive an opportunity for a complete and full review.

7. Your Defendants allege that actions by Judge Barnes and Judge Hanson (retired) fail to satisfy minimum standards of judicial performance and competence pursuant to S. Ct. Rule 58. This Honorable Court has authorized a program for judicial performance evaluation administered by the Planning and Oversight Committee for a Judicial Performance Evaluation Program (Oversight Committee). Your Defendants offer vital incontrovertible evidence to the Oversight Committee so that the purpose of achieving excellence in the performance of individual judges and the improvement of the judiciary as a whole may be accomplished.

An example of typical substandard performance and incompetence by Judge Barnes can be seen in the action of Barnes at the motion hearing on July 20, 1995. At this hearing, Barnes denied various rights to defendants protected by the U.S. Constitution, also to include the right to counsel. Barnes went so far as to deny defendants a drink of water on three appearances(R-11).

An example of typical substandard performance and incompetence by Judge Hanson, your Defendants contend, are statements from transcripts of a motion to suppress hearing on December 18, 1995. Judge Hanson is quoted on Page R99-100 of the transcripts, "This is a broadening, had you walked in here with this in 19 what, '74, '75 I'd say you just run a real good chance possibly getting this, something suppressed here. I don't feel that way because the cases have refined and defined and actually broadened I would say, maybe I'm wrong, but I think they have broadened and I think the totality of the circumstances is something if the judge doesn't watch out he can say any search is good." On Page R100, "I mean it could be wrong, but it's something that he has the right to rely on in this totality. Why? Because the car itself is an exigent circumstance." And also, "but it's the Officer's opinion of whether he's nervous or not that counts."

8. Your Defendants allege that actions by Judge Barnes and Judge Hanson (retired)fail to satisfy minimum standards of the Illinois Code of Judicial

Conduct as laid out in S. Ct Rule 61, 62, and 63 and hereby submit this petition for review by the Judicial Inquiry Board and the Courts Commission. In consideration of S. Ct. Rule 62, (8): A judge shall perform judicial duties without bias or prejudice. This court is asked to consider the following:

In the Henry County Court on September 28, 1995, on Page R2 of the transcripts, Judge Hanson is quoted, "There are 11 motions as I see it. There may be more, I have a hearing set in Rock Island at 4:00 o'clock. I just want to keep it moving and save that sudoconstitutional stuff" Defendants contend that allowing only fifty(50) minutes for three parties to argue eleven (11) complicated issues of law is a flagrant abuse of an individuals right to due process, protected by the 14th Amendment, U.S. Constitution; and that referring to standing decisions by the U.S. Supreme Court as "that sudoconstitutional stuff" is a blatant disregard for the "Oath of Civil Officers" that Judge Hanson has sworn to, promising to defend the Constitution and the organic laws of the land.

In the hearing on December 18, 1995 (page R99 of the transcripts), Judge Hanson is quoted, "..and by the way the standards are not all these landmark cases which you did a beautiful job of reviewing, but believe me there are literally hundreds more and they're applied right here in Illinois by the Illinois courts." This is what we live with and the standard is the totality of the circumstances."

These typical examples of Judge Hanson's courtroom diatribe combined with deliberate alterations of the record leads your Defendants to conclude and contend that Judge Hanson has no regard for defendants' arguments or for lawful authority. Rather, Judges Jay Hanson and Clark Barnes brazenly abrogated lawful authority in order to obtain a conviction against Terrill and Easley.

Furthermore, if the "standards are not all these landmark cases which you did a beautiful job of reviewing" (Judge Hanson), what then are the standards? Defendants contend that all the arguments submitted by the defense were

supported by Supreme Court decisions that would lead a prudent and reasonable person to overturn the original conviction.

If Judges Barnes and Hanson can make decisions in complete disregard for precedence set in the U.S. Supreme Court then a Defendant has no recourse but to appeal until reaching a court whom understands the supreme decisive authority of U.S. Supreme Court decisions.

9. The Opinion given explaining the decision of the Appellate Court is replete with inaccuracies that need to be addressed,

For Example:

A. The Opinion states "the court denied defendants' request for appointment of the public defender"(p. 3, Par. 3, p. 8, par. 5), however your Defendants have never demanded appointment of Public Defender and have consistently objected to being denied counsel of their own choosing.

B. Opinion states "defendants first challenge the propriety of the stop and search of their vehicle"(p.4, par. 4). Defendants, have never challenged the traffic stop itself but the ensuing detention and search.

C. Opinion states "the fact that the passenger had two previous drug convictions, officers had sufficient reasonable suspicion to hold the defendants until the dog arrived (p. 6, par. 2), however the passenger is the co-defendant Roger Easley and he has no prior convictions.

D. Opinion states "there is nothing in the record to show that the defendants objected to this short, two minute detention" (p.6, par. 2), however the record reflects at every phase that defendants objected immediately at the scene and at every step of the procedure thereafter also to include any interrogations, investigations, search's, etc.(R , et. al.)

E. Opinion states "we conclude that the defendants are not entitled to have their case heard by an Article III Court" (p. 8, par. 1),

Defendants further contends this is a violation of Article III, section 1, U.S. Constitution, "The judicial Power

of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." This clause of the constitution puts All courts of the united States within article III.

F. Opinion States "they (defendants) note that only Article III courts have jurisdiction over controversies between a state and a sovereign", this is also inaccurate. Instead the Defendants argued that since the state was a party to the action that the U.S. Supreme Court had original jurisdiction, U.S. Const. Art. III, sec. 2.

"Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction..." Illinois State Constitution 1970, Article VI, paragraph 9.

U.S. Const. Art. III, sec. 2, clause 2, In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction.

The State of Illinois is a party to this action therefore it is the contention of theDefendants that the Circuit Court did NOT have original jurisdiction but that the U.S. Supreme Court did.

"Penal statutes are constructive in nature and cannot be enforced under the Common Law." United States v. Lacher, 134 US 624.

G. Opinion states "their defense was solely based on their personal opinion that the possession of cannabis should not be illegal". Defendants hereby challenges the reproduction of any statement, writings or other which support this to be true because it has never been alleged by Defendants and is NOT in the record.

10. Furthermore the Opinion of the Appellate Court is incomplete in its' addressing of the issues raised by your Defendants, for example:

a. It has never been decided by the Appellate Court if the court was improperly set with the States Attorney prosecuting once the defendants demanded the Illinois Attorney General prosecute if the case were truly 'criminal' as

a matter of right (see Appellants Brief, par.4, B., pg.27), and reiterate in support the following:

States Attorney can be found in the Illinois State Constitution, Article VI, par.,19 (A-12).

Defendants hereby contend prosecuting this action with the States Attorney is a violation of Art. IV, sec. 4, U.S. Const. "The United States shall guarantee to every state in this Union a republican form of government,and shall protect each of them against invasion". It is the contention that the appellant has been denied the protection of Article IV, sec.4, U.S. Const.

b. It has never been addressed by the Appellate Court if ordering payment of a fine can be exacted lawfully in today's common currency of private exchange notes after the objection of the defendant (see Appellant Brief, par.4, F., pg.28), and Defendants further reiterate in support the following:

The Coinage Act of 1792 and all later Coinage acts, including the Bland Allison Act, are clear, concise and not significantly amended after these many years. They clearly and plainly define the dollar as 412.5 grains troy weight standard silver, or the gold equivalent.

The Supreme Law of the land, the U.S. Constitution, in Article VI, 2nd paragraph
binds the judges in their duty to uphold the same, in spite of any "laws" to the contrary!

Article 1, Section 10, of the United States Constitution says:"...no State shall make any thing but gold and silver coin a tender in payment of debts;"---which would preclude the Court, quite before the fact, from any provision to collect any fines, because the Defendant doesn't know where to go to get any lawful money!

c. It has not been addressed by the Appellate court if reversible error occurred by the trial court judge not asking the prospective jurors the questions submitted by the defendants,(see Appellant Brief par. 4, J-K., pg. 29.) Defendants further reiterate in support:

"No freeman shall be taken, outlawed, banished or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land." Duncan v. Louisiana, 391 US 169.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" U.S. Const. Amendment 6.

It is the contention of the appellant that it was impossible for a determination of the bias or impartiality of the jurors without the questions submitted by the defense being asked of them. Therefore, it is also impossible to determine if your appellant was tried by a jury of his peers.

CONCLUSION

For the foregoing reasons, Petitioners submit the petition for a writ of certiorari should be granted.

January 13, 1999.

Respectfully Submitted

Roger Easley
In Propria Persona

Brian Terrill
In Propria Persona

APPENDIX A

3-96-0364 & 33-96-0365
People v. Easley & Terrill

STATE OF ILLINOIS
APPELLATE COURT
THIRD DISTRICT, OTTOWA

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord One Thousand Nine Hundred and Ninety Seven, within and for the Third District of Illinois:

Present -

HONORABLE TOM M. LYTTON, Presiding Justice

HONORABLE MICHAEL P. MC CUSKEY, Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice

HONORABLE KENT SLATER, Justice

HONORABLE THOMAS J. HOMER, Justice

HONORABLE PEG BRESLIN, Justice

HONORABLE JOHN F. MICHELA, Justice
GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on May 30, 1997 the Opinion of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

No. 3-96-0364
(Consolidated with No. 3--96--0365)
IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D. , 1997

THE PEOPLE OF THE STATE OF ILLINOIS,	from the Circuit Court for the 14th Judicial Circuit Henry County,
Plaintiff-Appellee, V.	Illinois Nos.95CM-377, 95--CM354
ROGER L. EASLEY and BRIAN J. TERRILL,	Honorable Jay Hanson, Judge
Defendants-Appellants. aapeal	Presiding

JUSTICE McCUSKEY delivered the opinion of the court:

The defendants, Roger L. Easley and Brian J. Terrill, were convicted of unlawful possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 1994)) and unlawful possession of cannabis (720 ILCS 550/4(c) (West 1994)). Easley was fined $1,250, and Terrill's fine was $1,750. On appeal, the defendants challenge the stop and search of their vehicle, the conduct of the trial and the sufficiency of the evidence. After carefully reviewing the record, we affirm.

FACTS

On May 12, 1995, Officer Shane Oleson of the Geneseo police department (the officer) saw a white 1985 Toyota vehicle with no rear registration light make an unsignaled right turn. The car pulled into a parking lot, and the officer stopped his squad car

behind it. When the officer approached the car, he found the defendants inside. The officer then asked the driver, Terrill, for his driver's license. When Terrill opened his wallet, the officer saw a business card decorated with a picture of a marijuana leaf inside the wallet. Terrill immediately tried to hide the card from the officer's view. The officer observed that Terrill appeared nervous and was perspiring, and the vehicle's ashtray was open.

The officer returned to his squad car to run Terrill's license through the computer. Because the officer saw the picture of the marijuana leaf, he ran a check of Terrill's criminal history. During this time, the defendants remained in the car. The officer's investigation revealed that Terrill's license was valid, and he had a prior conviction for a drug offense. When the officer returned to the defendants' car, he noted that the ashtray was closed. The officer gave Terrill a verbal warning concerning the rear registration light and the need to signal his turns.

At this time, a conversation took place during which the defendants asked how much farther they would have to drive to reach Chicago. When the officer asked why they were going to Chicago, the defendants said they were going to a festival to advocate the legalization of hemp. The officer told the defendants that he was concerned, based upon seeing the marijuana leaf picture and Terrill's previous criminal history, that there might be illegal drugs in the vehicle. The defendants denied carrying any illegal substances. As a result of their response, the officer asked if he

could search the car. The defendants refused to give permission for the officer to search the vehicle.

The officer informed the defendants that they were free to go. However, he told them that he would detain the vehicle to give a canine unit the chance to walk around the car to determine if drugs were present. Approximately two minutes elapsed before the canine unit arrived. The dog proceeded to alert when he reached the trunk area of the car. The officer then searched the trunk of the vehicle and found a large box of glass pipes ordinarily used to smoke marijuana, another box of glass pipes with brass screens also used to smoke marijuana, several products made from hemp, including cookie dough mix, pancake mix, lip balm and sunblock, and various items promoting the legalization of hemp, including bumper stickers.

Based upon the possession of these items, the officer arrested the defendants on a charge of unlawful possession of drug paraphernalia. Following the arrest, the officer searched the interior of the defendants' car and found 12} grams of marijuana located inside a camcorder case on the front seat. Consequently, the defendants were charged with unlawful possession of cannabis.

Prior to trial,, the State waived the prospect of any incarceration for the defendants if they were found guilty of the various offenses. Based upon this waiver, the trial court denied the defendants' request for appointment of the public defender. The defendants filed numerous motions attacking the jurisdiction of

the court and the propriety of the officer's stop and search of the vehicle. All of the defendants' motions were denied.

At trial, Officer Oleson testified about his observations of the defendants on May 12, 1995, as well as their arrest and his search of the vehicle. Two other officers of the Geneseo police department testified on behalf of the State. Their testimony corroborated Officer Oleson's testimony.

Following the presentation of the evidence, the defendants tendered to the court several non-pattern IPI jury instructions. The judge refused to give the jury these instructions.

After deliberating, the jury found the defendants guilty as charged. This timely appeal followed.

ISSUES AND ANALYSIS

I. Stop and Search

The defendants first challenge the propriety of the stop and search of their vehicle. Where, as here, there is no real question regarding the facts, we conduct a de novo review of the trial court's determination of reasonable suspicion to stop a vehicle and probable cause to conduct a search. Ornelas v. United States, U.S., 134 L. Ed. 2d 911, 920-21, 116 S. Ct. 1657 (1996); see also People v. Kidd, 175 Ill. 2d 1, 25-26, 675 N.E.2d 910, 922 (1996). Following our de novo review, we conclude that the trial court correctly found that the stop and search were proper.

Generally, a traffic violation provides a sufficient basis for a traffic stop. People v. Hood, 265 Ill. App. 3d 232, 241, 638 N.E.2d 264, 271 (1994). Accordingly, a police officer may properly

stop a motor vehicle when the driver turns without signaling. People v. Shepherd, 242 Ill. App. 3d 24, 29, 610 N.E.2d 163, 166 (1993). Officer Oleson's testimony that Terrill failed to signal his turn was not contradicted at trial. Thus, the defendants were properly stopped for turning without signaling.

When a police officer stops a vehicle for a minor traffic violation, the officer may briefly detain the driver to request a valid driver's license. People v. Koutsakis, 272 Ill. App. 3d 159, 163, 649 N.E.2d 605, 608 (1995). Also, in some situations, the police officer may conduct a speedy warrant check. Koutsakis, 272 Ill. App. 3d at 163, 649 N.E.2d at 608. If no further suspicion is aroused in the officer following these initial inquiries, the traffic stop may go no further and the individuals involved should no longer be detained. Koutsakis, 272 Ill. App. 3d at 163, 649 N.E.2d at 608; see also People v. Sinclair, 281 Ill. App. 3d 131, 138, 666 N.E.2d 1221, 1226 (1996).

However, where the officer's suspicion is aroused during these initial inquiries, further detention may be warranted. United States v. Finke, 85 F.3d 1275, 1280 (7th Cir. 1996); People v. Smith, 208 Ill. App. 3d 44, 50, 566 N.E.2d 939, 943 (1991). In deciding whether reasonable suspicion exists to justify the detention, we must consider the totality of the circumstances or the "whole picture" in each case. People v. Anaya, 279 Ill. App. 3d 940, 945-46, 665 N.E.2d 525, 529 (1996), citing United States v. Sokolow, 490 U.S. 1, 8, 104 L. Ed. 2d 1, 10, 109 S. Ct. 1581, 1585 (1989). Even where there may be an innocent explanation for each

individual factor considered separately, the factors viewed in combination may constitute enough reasonable suspicion to warrant further detention. Finke, 85 F.3d at 1280.

Here, in this case, Officer Oleson asked Terrill for his driver's license and observed a card decorated with a marijuana leaf in Terrill's wallet. Also, Terrill appeared nervous and was perspiring. Based upon these facts, Officer Oleson was justified in running a check of Terrill's criminal history. See Finke, 85 F.3d at 1280 (because of suspicious behavior and circumstances, officers justified in performing criminal history check).

Officer Oleson then discovered that Terrill had a prior conviction of a drug offense. When the officer returned to the vehicle he observed that the ashtray, which had been open, was now closed. Further, the defendants told the officer that they were traveling to a festival to advocate the legalization of hemp. Based upon all of these facts, considered in combination, we conclude that the officer was justified in detaining the defendants for an additional two minutes until the canine unit arrived. See Finke, 85 F.3d at 1282 (considering the suspicious circumstances and the fact that the passenger had two previous drug convictions, officers had sufficient reasonable suspicion to hold the defendants four minutes until the dog arrived). We additionally note there is nothing in the record to show that the defendants objected to this short, two-minute detention or that the officer used any kind of coercion to compel the defendants to stay.

After the dog alerted, Officer Oleson had probable cause to search the vehicle. See Finke, 85 F.3d at 1282 (when dog alerted, reasonable suspicion blossomed into probable cause to search); United States v. Bloomfield, 40 F.3d 910, 919 (Sth Cir. 1994) (dog's identification provides probable cause that drugs are present); Koutsakis, 272 Ill. App. 3d at 163, 649 N.E.2d at 608 (an alert by a trained dog may constitute probable cause for a search). Moreover, finding items of drug paraphernalia provides the police with sufficient probable cause to search the vehicle for concealed drugs. People v. Schrems, 224 Ill. App. 3d 988, 998, 586 N.E.2d 1337, 1345 (1992). As a consequence, after the police found drug paraphernalia in the vehicle's trunk, they had probable cause to search the remainder of the vehicle.

Based upon the undisputed facts in this case, we conclude that the stop and detention of the vehicle were justified. Also, we find the search was proper because it was based upon probable cause.

II. Trial Proceedings

A. Jurisdiction

The defendants claim the circuit court of Illinois lacks jurisdiction in this case because it is not a court authorized by Article III of the United States Constitution. U.S. Const., art. III. Also, they note that only Article III courts have jurisdiction over controversies between a state and a sovereign. The defendants contend they are sovereigns, and, because the State

of Illinois is the opposing party, this case must be adjudicated by an Article III court.

The defendants cite no authority for their contention that an ordinary citizen is a "sovereign." Furthermore, our research reveals no such authority. Consequently, we conclude that the defendants are not sovereigns and are not entitled to have their case heard by an Article III court.

B. Grand Jury Indictment

The defendants claim they were entitled to be indicted by a grand jury. However, it is well-settled law that the fifth amendment constitutional requirement of a grand jury indictment is not applicable to state criminal proceedings. People v. Redmond, 67 Ill. 2d 242, 246, 367 N.E.2d 703, 705 (1977). Accordingly, the defendants had no right to be indicted by a grand jury.

C. Right to Counsel

The defendants argue that they were entitled to the appointment of a public defender to represent them in this case. However, the sixth amendment right to counsel applies only in those cases where the defendant is actually sentenced to imprisonment. Scott v. Illinois, 440 U.S. 367, 373-4, 59 L. Ed. 2d 383, 388-9, 99 S. Ct. 1158, 1162 (1979). Because the prosecutor waived any jail sentence for the defendants, they were not entitled to the appointment of counsel at the State's expense.

D. Continuance

Next, the defendants maintain they were prejudiced in preparing for trial because the trial court denied their request for a continuance. Again, from our review of the record, we disagree.

The granting of a continuance rests within the sound discretion of the trial court, and that court's determination will not be reversed unless there has been an abuse of discretion. People v. Cobb, 97 Ill. 2d 465, 477, 455 N.E.2d 31, 36 (1983). Before it can be held that a motion for continuance based upon a lack of preparedness was improperly denied, it must appear from the record that the refusal prejudiced the defendant. People v. Wilson, 29 Ill. 2d 82, 92, 193 N.E.2d 449, 454 (1963).

It is abundantly clear from the record that the defendants sought a continuance only to gain time so they could file additional motions to relitigate on the very issues the trial court had previously ruled upon. It is also clear from our review of the record that the defendants were not conducting any investigation which would exculpate them at trial. Indeed, their defense was solely based on their personal opinion that the possession of cannabis should not be illegal. For these reasons, we find the trial court did not abuse its discretion in denying the defendants' request for a continuance.

E. Jury Instructions

The defendants' final contention is that the trial court erred in refusing to give various instructions they tendered at trial.

A trial judge's decision to reject non-pattern jury instructions is not an abuse of discretion when the instructions the court has given the jury adequately cover the issues in the case. People v. Garcia, 165 Ill. 2d 409, 432, 651 N.E.2d 100, 111 (1995). The law is well settled that argumentative instructions should not be given by the trial court. See People v. Yutt, 231 Ill. App. 3d 718, 724, 597 N.E.2d 208, 212 (1992). From our review, we find the defendants' instructions to be argumentative. Moreover, the pattern instructions given by the court adequately informed the jury of the rules of law governing their deliberations. Accordingly, we find no error in the trial court's refusal to give the defendant's non-pattern jury instructions.

III. Reasonable Doubt

The next issue raised by the defendants is whether they were proved guilty beyond a reasonable doubt. They contend that the State failed: (1) to prove the "corpus delicti" of the crime; (2) to prove they intended to possess drug paraphernalia or cannabis; and (3) to present any reliable witnesses.

In assessing whether the defendant has been proven guilty beyond a reasonable doubt, the relevant question is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

People v. Collins, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276 (1985). A reviewing court wilt not reverse a conviction unless the evidence is so improbable, unreasonable or unsatisfactory as to raise a reasonable doubt concerning the defendant's guilt. People v. Singletary, 237 Ill. App. 3d 503, 506, 604 N.E.2d 1009, 1012 (1992).

A person commits unlawful possession of drug paraphernalia when he knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling or otherwise introducing cannabis into the human body. 720 ILCS 600/3.5(a) (West 1994). In determining whether the defendant intended to use the paraphernalia, the trier of fact may consider whether the cannabis was found in the proximity of the paraphernalia. 720 ILCS 600/3.5(b) (West 1994). A person commits unlawful possession of cannabis when he knowingly possesses any substance containing cannabis. 720 ILCS 550/4 (West 1994).

From our careful review of the record, we find the evidence was sufficient to prove the defendants guilty beyond a reasonable doubt. The defendants admitted they were traveling to a festival to advocate the legalization of hemp. Also, Terrill carried a picture of a marijuana leaf in his wallet. Moreover, when Officer Oleson went to his squad car to run a check on Terrill's license, the defendants closed the vehicle's ashtray. A search revealed that the trunk of the car was filled with pipes used to smoke marijuana, as well as other products derived from the hemp plant. Based on these facts, the jury could reasonably have concluded that

the defendants knew they possessed drug paraphernalia and intended to use the paraphernalia to ingest cannabis. Also, from this evidence, the jury could have easily concluded that the defendants knew they possessed cannabis.

Contrary to the defendants' assertion, the State did prove the "corpus delicti," i.e., that a crime had been committed. See Black's Law Dictionary 344 (6th ed. 1990). Possession of drug paraphernalia and cannabis is against the laws of the State of Illinois. The prosecutor in this case proved that the defendants possessed these items. Additionally, he proved the proper mental state for the offense by proving the defendants knew they possessed the cannabis and the paraphernalia. See 720 ILCS 5/4--4, 4--5, 550/4, 600/3.5(a) (West 1994).

Finally, it is well-settled law that a court of review may not substitute its judgment for that of the trier of fact concerning the weight, credibility or conflicting nature of the evidence. See People v. Sanchez, 115 Ill. 2d 238, 260-1, 503 N.E.2d 277, 284 (1986). It is clear from the record that the jury found the testimony of the police officers was reliable and worthy of belief. A court of review should not disagree with the trier of fact's determination on issues of credibility.

After reviewing the record, we find the defendants were proven guilty beyond a reasonable doubt.

IV. Other Issues

The defendants have raised numerous other issues regarding the conduct of their trial. However, from our review, we find that the

defendants have waived these claims on appeal because they failed to support them with coherent legal arguments. See Spinelli v. Immanuel Lutheran Evangelical Congregation, 118 Ill. 2d 389, 401, 515 N.E.2d 1222, 1227 (1987).

For the reasons stated, we affirm the judgment of the circuit

court of Henry County.

Affirmed.

SLATER, J., concurs.

HOLDRIDGE, J., dissents

No. 3-96-0364 cons w/ 3--96--0365
JUSTICE HOLDRIDGE, dissenting:

I respectfully dissent. I would find that Officer Oleson did not have probable cause to search defendants' vehicle subsequent to the traffic stop and I would reverse the conviction on that basis.

I agree that under Ornelas v. United States, 517 U.S. , 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996), a de novo standard of review should be applied to issues involving reasonable suspicion to stop a vehicle and probable cause to conduct a search. See, People v. Kidd, No. 76490 (Ill. Supreme Court, December 19, 1996). However, even under a manifest weight of the evidence standard of review, I would hold that probable cause to search the vehicle was lacking.

Warrantless searches are presumptively unreasonable unless certain limited exceptions apply. People v. Rinaldo, 80 Ill. App. 3d 433, 434 (1980). Prior to the search of a car, the police must obtain a search warrant unless circumstances fall within an exception to t~ warrant requirement such as probable cause. United States v. Ross, 456 U.S. 798, 809, 72)L. Ed. 2d 572, 583-84,102 S. Ct 2157, 2164(1982).

To establish probable cause to search an automobile, it must be shown that the totality of the facts and circumstances known to the officer at the time of the search would justify a reasonable person in believing that contraband was present in the automobile. People v. Smith, 95 Ill. 2d 412, 419 (1983). "Stopping a vehicle for a minor traffic violation does not, by itself, justify a search of the detainee's person or vehicle. The officer must reasonably believe that he is confronting a situation more serious than a

routine traffic violation to do so.in People v. Penny, 188 App. 3d 499, 502 (1989

In this matter, I believe that a review of the record shows that Officer Oleson lacked probable cause to detain the vehicle after issuing the verbal warning, checking the driver's license and running the warrant check. The facts that one defendant had a business card with a marijuana leaf embossed on it, and that the defendants told the officer that they were in route to a festival advocating the legalization of hemp are both lawful activities protected by the First Amendment to the United States Constitution. I do not believe that these lawful activities can constitute probable cause.

These facts, combined with the officer's observation of the ash tray being open the first time he saw it, and closed the next, amount to mere suspicion. "Mere suspicion or curiosity is not enough to justify a search, and an officer's authority to investigate a traffic violation may not serve as a subterfuge to obtain other evidence based on suspicion." Penny, 188 Ill. App. 3d at 502.

Likewise, the officer's observation of Terrill's nervousness and perspiration cannot support a finding of probable cause. Merely appearing nervous at the approach of a police office is not sufficiently suspicious conduct to justify probable cause. People v. Blake, 268 Ill. App. 3d 737, 741 (1995).

Finally, the fact that the trained dog "alerted" to a possible presence of a controlled substance after the defendants' vehicle

was detained cannot support a finding that the officer had probable cause to detain the vehicle for the search. The existence of probable cause to detain and search must be based upon the totality of the circumstances known to the officer at the time of the search. The critical time period in this case is the period of time from the initial-stop-of the Vehicle until the dog's alert. People v. Koutsakis, 272 Ill. App. 3d 159, 163 (1995). If there was no basis for a search of vehicle prior to the dog's alert, the defendants were not lawfully detained at the time of the alert, and the search was unlawful. Koutsakis, 272 Ill. App. 3d at 163.

I would hold that Officer Oleson did not have probable cause to search the defendants' vehicle and would reverse the trial court on that basis. Since the People could not prevail on remand without the evidence that I would find should have been suppressed, I would reverse defendants' convictions outright. People v. Woods, 241 Ill. App. 3d 285, 290 (1993).

AS Clerk of the Appellate Court, in and for said Third District of the State of Illinois, and keeper of the Records and Seal thereof, I do hereby certify that the foregoing is a true, full and complete copy of the opinion of the said Appellate Court in the above-entitled cause, now of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court at Ottawa, this 30th day of May in the year of our Lord one thousand nine hundred and ninety-seven.

Clerk of the Appellate Court

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPRREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

85038

June 3, 1998

Mr. Roger Easley
P.O. Box 7399-215
Breckenridge, CO 80424

No. 85038 - People State of Illinois, respondent,
v. Roger L. Easley et al., petitioners.
Leave to appeal, Appellate Court,
Third District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this court will issue to the Appellate Court on June 25, 1998.

APPENDIX C

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF JUDICIAL CIRCUIT 14
COUNTY OF Henry

Case number1995CM000354D 001 POSSESS DRUG PARAPHERNALIA 0720 06000 3.5(a)
Plaintiff PEOPLE
v.
Defendant Terrill, Brian, J
Court date 8/06/1997
Court time 9:00
Judge ASSOCIATE
Room 2
Hearing type/show cause
NOTICE
To: TERRILL, BRIAN J
10517 SNOWY TR PO BOX 16042
DENVER CO 80216-0000
RULE
ON HARCH 14, 1996 THE JUDGE ORDERED YQU TO MAKE PAYMERT ON THE ABOVE CASE TN THE AMOUNT OF $2177.00 WITHIN 30 DAYS.

YOU ARE NOW ORDERED TO HAKE PAYMENT IN THE AMOUNT OF S2177.00 BY AUGUST 6, 1997 OR APPEAR PERSONALLY IN COURT AT 09:00 AM ON THAT DATE TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN CONTEMT OF COURT. FAILURE TO MAKE PAYINENT OR APPEAR WILL BE CAUSE FOR A WARRANT TO BE ISSUED FOR YOUR ARREST.

DANA R. MCREYNOLDS, JUDGE

PAYMENT MUST BE MADE IN THE FORM OF MONEY ORDER, CASHIER CHECK OR CERTIFIED CHECK.*** NO PERSONAL CHECKS WILL BE ACCEPTED.

FROM CIRCUIT CLERK'S OFFICE
HENRY COUNTY COURTHOUSE
BOX 9, CAMBRIDGE, IL 61238
DATED July 09, 1997

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF JUDICIAL CIRCUIT 14
COUNTY OF Henry

Case number1995CM000354D 001 POSSESS DRUG PARAPHERNALIA 0720 06000 3.5(a)
Plaintiff PEOPLE
v.
Defendant Roger Easley, J
Court date 8/06/1997
Court time 9:00
Judge ASSOCIATE
Room 2
Hearing type/show cause
NOTICE
To: ROGER EASLEY
P.O.Box7399
Breckenridge, CO 80424
RULE
ON HARCH 14, 1996 THE JUDGE ORDERED YQU TO MAKE PAYMERT ON THE ABOVE CASE TN THE AMOUNT OF $1677.00 WITHIN 30 DAYS.

YOU ARE NOW ORDERED TO HAKE PAYMENT IN THE AMOUNT OF S1677.00 BY AUGUST 6, 1997 OR APPEAR PERSONALLY IN COURT AT 09:00 AM ON THAT DATE TO SHOW CAUSE WHY YOU SHOULD NOT BE HELD IN CONTEMT OF COURT. FAILURE TO MAKE PAYINENT OR APPEAR WILL BE CAUSE FOR A WARRANT TO BE ISSUED FOR YOUR ARREST.

DANA R. MCREYNOLDS, JUDGE

PAYMENT MUST BE MADE IN THE FORM OF MONEY ORDER, CASHIER CHECK OR CERTIFIED CHECK.*** NO PERSONAL CHECKS WILL BE ACCEPTED.

FROM CIRCUIT CLERK'S OFFICE
HENRY COUNTY COURTHOUSE
BOX 9, CAMBRIDGE, IL 61238
DATED July 09, 1997